

1 U.S. BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-SMB

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5 In the Matter of SECURITIES INVESTOR PROTECTION CORPORATION

6 Debtor.

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9 United States Bankruptcy Court

10 One Bowling Green

11 New York, New York 10004

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13 June 20, 2016

14 10:00 AM

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16 B E F O R E:

17 HON. STUART M. BERNSTEIN

18 U.S. BANKRUPTCY JUDGE

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25 ECRO: J. PEREYRA

1 HEARING RE Conference re: Annette Bongiorno Deposition

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25 Transcribed by: Mary Zajackowski

1 A P P E A R A N C E S :

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1 P R O C E E D I N G S

2 MS. BROWN: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. BROWN: Seanna Brown on behalf of Irving Picard,
5 Trustee.

6 Your Honor, we're here today because we received
7 several objections to rescheduling the deposition of Ms.
8 Annette Bongiorno. And before we get to those objections, I'd
9 just like to briefly tell Your Honor why the testimony remains
10 relevant today and, if anything, it's even more relevant to
11 find the discovery that the Trustee has conducted so far.

12 The Trustee deposed four BLMIS witnesses, all of whom
13 testified that Ms. Bongiorno was their supervisor. These
14 witnesses identified Ms. Bongiorno's handwriting on several key
15 documents including what we refer to as the spiral notebook.
16 This notebook is a book that details the checks that were out
17 of BLMIS.

18 This book contains the names of Mr. Blecker and the
19 Blum's, and several witnesses identified Ms. Bongiorno's
20 handwriting throughout this book; these witnesses also
21 identified Ms. Bongiorno's handwriting on several of the
22 account opening forms that were used internally at BLMIS. And
23 on those forms is a notation for send or re-invest. And what
24 we have discovered so far is that this dictates whether or not
25 the account was sent profits or the profits were re-invested.

1 This form was filled out by BLMIS employees, including
2 Ms. Bongiorno, and is relevant to the profit withdrawal issue
3 at hand. In particular, Mr. Blecker's -- one of Mr. Blecker's
4 account opening forms, a witness identified Ms. Bongiorno's
5 handwriting on that form and another witness identified her
6 handwriting on the account opening documents for Joel Blum.

7 THE COURT: Did any of them testify about these PW
8 notations?

9 MS. BROWN: They did, Your Honor. The witnesses -- if
10 you want I can give you a brief summary.

11 THE COURT: Yeah, I'm curious.

12 MS. BROWN: So we deposed two of what we call the key
13 punch operators. These were people that input data into the AS
14 400 System used by BLMIS to print those statements as well as
15 the checks. So their knowledge was really based about how the
16 checks were created, how the information was stored in the AS
17 400, and information about checks being printed and mailed to
18 customers. We also deposed Winifred Jackson who was an
19 assistant to JoAnn Crupi and Ms. Bongiorno, who also had
20 responsibilities relating to checks and other administrative
21 duties at BLMIS.

22 The fourth witness was a woman named Joanna Sala. She
23 was what's referred to as an accounts manager. She managed
24 convertible arbitrage accounts. These are the types of
25 accounts that had profit withdrawal transactions in them and

1 she testified about the profit withdrawal notations, what they
2 meant, how checks were sent to customers, and how the
3 transactions were calculated on the statements.

4 THE COURT: What did she say about what they meant?

5 MS. BROWN: She said that the profit withdrawal
6 transactions as -- so to take a particular deal, there was a
7 purported, you know, buy of a security -- reported sale of a
8 security and a profit that was generated. The profit is shown
9 on the statement as a PW with the name of the security in the
10 check in the transaction field.

11 She testified that those were checks that were sent to
12 customers and what the -- the reason why she testified to that
13 is because she said that the way the accounts were set up is
14 either they were set up as a send or re-invest account. If it
15 was set up as a send account, the customers were sent their
16 profits automatically. They did not need to write to BLMIS to
17 request their profits for each and every transaction that they
18 engaged in. They would be sent those profits automatically.

19 If, on the other hand, a customer wanted a one-off
20 withdrawal, which would be denoted in the books and records as
21 a capital withdrawal -- this is what she testified to -- that
22 would need to be in writing and that would be maintained in the
23 customer files.

24 So the way that the account was set up is very
25 critical to the question before the Court. And several of

1 these witnesses testified that Ms. Bongiorno was involved in
2 setting up the accounts, that she directed them as to how to
3 set up the accounts and that she was a decision maker in that
4 regard.

5 So all of the testimony that we sought so far, Your
6 Honor, the four witnesses that I just outlined, each of them
7 have supported the Trustee's determination to treat proper
8 withdrawal transactions in the way that he did, and all the
9 testimony has been highly relevant to the questions before Your
10 Honor. They have not been fishing expeditions and have not
11 been a wasted effort. Nor do I believe that the testimony of
12 Ms. Bongiorno would be either a fishing expedition.

13 THE COURT: One of the issues that's raised, I guess,
14 in Ms. Chaitman's letter is they knew or should have known that
15 Ms. Bongiorno might assert a Fifth Amendment privilege.

16 MS. BROWN: Right.

17 THE COURT: What's your response to that?

18 MS. BROWN: My response to that, Your Honor, is we
19 have -- the only information I have is what her counsel
20 informed me of and her counsel informed me, you know, several
21 weeks prior to the deposition that she was going to testify.
22 And on that basis, we moved ahead with scheduling her
23 deposition.

24 As her deposition got closer the -- you know, the
25 agreement was executed by the Trustee, the settlement agreement

1 by the Trustee, the U.S. Attorney; it was not executed by Ms.
2 Bongiorno and her husband Ruby. Her counsel said that she may
3 still provide testimony even though it's not signed and on that
4 basis, with that deadline approaching the following week, the
5 Trustee had no choice but to go down there and see if she would
6 follow through on what she had previously said that she would
7 do.

8 THE COURT: Did you discuss with the parties that she
9 may not testify; let's put this off until she signs the
10 settlement agreement?

11 MS. BROWN: I did not do that, Your Honor, because I
12 was not told that until the Sunday when I was already down in
13 Florida that she may not testify based on the agreement. And,
14 you know, with the arrangements with the prison it's not as
15 though we can just show-up on any day that works for everyone.
16 I highly doubt that if it came to be that Ms. Bongiorno said
17 that she was willing to provide testimony on July 8th that my
18 adversaries would have consented to me taking this deposition
19 now if I had not gone.

20 So in order to protect the Trustee's interest, we felt
21 that based on the representation from her counsel that the only
22 choice that we had was to proceed and see if Ms. Bongiorno
23 would indeed follow through on what she had said previously to
24 both myself -- well, through her counsel and Ms. Chaitman that
25 she intended to provide testimony.

1 Your Honor, if I may just go back to why Ms.
2 Bongiorno's testimony is relevant. You know, her counsel has
3 indeed confirmed that she has information on proper withdrawal
4 transactions and that is also confirmed by the deposition
5 testimony of the other witnesses.

6 Lastly, the reason why her testimony is even more
7 relevant is because counsel had been pursuing a line of
8 questioning in the depositions that have been taken so far
9 regarding Ms. Bongiorno specifically and her personal actions.
10 And on that basis, I think that we are entitled to explore that
11 line of questioning to the extent that they plan to raise it as
12 part of the arguments before Your Honor.

13 Turning to the objections that we have received, I
14 think I addressed the one from Ms. Chaitman. The objections
15 from Mr. Kirby, you know, appear to be mostly based on cost.
16 Mr. Kirby didn't attend the deposition of Ms. Bongiorno on July
17 8th.

18 THE COURT: Did anyone from his office.

19 MS. BROWN: No, Your Honor. The only person from his
20 office that -- I'm sorry. The only person that attended other
21 then the Trustee and counsel for Ms. Bongiorno was Mr. Dexter
22 from Chaitman LLP. Unless he plans to attend the next
23 deposition, it's not clear that he will have any cost
24 associated with the deposition.

25 As we indicated in our letter, the parties have been

1 working out a stipulation to try to modify the briefing
2 schedule and streamline it a bit for Your Honor. And the
3 proposed date from Mr. Kirby for the Claimant's opposition
4 brief would be September 30th. So if the deposition were
5 permitted to go forward on July 8th that would be sufficient
6 time for the parties to address any issues that arose in Ms.
7 Bongiorno's testimony on that date.

8 So on that basis, Your Honor, you know, given that she
9 has relevant testimony, her counsel has confirmed that she
10 will, in fact, provide testimony on the 8th and that there are
11 no further impediments remaining to her testimony in light of
12 the settlement agreement with the U.S. Attorney's Office. We
13 would request that Your Honor permit the deposition to go
14 forward.

15 THE COURT: How long do you think it's going to last?

16 MS. BROWN: The deposition?

17 THE COURT: Yeah.

18 MS. BROWN: I anticipate that I would have somewhere
19 between like four hours of questioning, that's been the
20 approximate length of the depositions so far.

21 THE COURT: Does the prison limit the amount of time
22 that you can have with her?

23 MS. BROWN: They do. We have been told that we need
24 to arrive by 8:00 a.m. and I think we need to finish, I
25 believe, either by three or four.

1 THE COURT: Do you then get to continue the next day
2 if there isn't enough time?

3 MS. BROWN: I did not raise that with them
4 specifically, but I anticipate that they would accommodate us.

5 THE COURT: Okay. All right.

6 MS. BROWN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. KIRBY: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. KIRBY: Richard Kirby on behalf of Dr.'s Joel and
11 Norman Blum.

12 We are here again on the Trustee's seemingly endless
13 search for what they claim to be the truth. The facts are a
14 little different then they have outlined. And I think it's
15 worth the Court focusing on that because of what their -- this
16 current effort that they're pursuing. They don't have checks.
17 The ledgers that they talk about seem to have been long since
18 destroyed. The problem they have is they can't prove that
19 these checks went out.

20 THE COURT: That's really a question for trial, isn't
21 it?

22 MR. KIRBY: Yes, but I think it does matter that what
23 the testimony of these people have been so far is they had a
24 system if there was a check to be written; the flunkies. To be
25 blunt about it, these were persons who had no knowledge about

1 what the transactions were because that was something that they
2 was not involved.

3 What the Trustee's own experts have said is that these
4 transactions were entire fictitious. The profits -- there were
5 no profits; that's what their expert has said. The Trustee has
6 said that himself in the papers.

7 THE COURT: No profits because there were no real
8 transactions --

9 MR. KIRBY: Correct.

10 THE COURT: -- or they didn't send out checks to
11 people.

12 MR. KIRBY: Undoubtedly, they did send checks out, but
13 the problem is, is that my clients have said they never got
14 them. They never received those checks.

15 THE COURT: Okay. But, you know, I'm not trying the
16 case. I hear you, but I'm not going to try the case as a
17 discovery dispute. I suppose if people came on and said every
18 PW means that a check went out, I can weigh that.

19 MR. KIRBY: That's not what they said.

20 THE COURT: Well, but I don't know what they were
21 saying, you know.

22 MR. KIRBY: Okay. Fair enough. Let's get back to
23 this. All right.

24 The Court set a deadline on September 13th -- I mean
25 on June 13th. They have taken the testimony. What they didn't

1 tell everybody was that they were in the process of trying to
2 buy Ms. Bongiorno's testimony through the settlement.

3 What they have stood up here today and said, as I
4 understand it, is she'll have relevant testimony to proffer
5 withdrawal transactions. At this point, they ought to have
6 more of a proffer before we go forward. What they -- they
7 don't really --

8 THE COURT: But how can they proffer what she's going
9 to say until they ask her.

10 MR. KIRBY: Well, certainly they -- their attorney
11 should make a proffer. My goodness, if they were buying her
12 testimony, they wouldn't be buying a pig and a poke. I assume
13 that they had some sense as to what she would say, but they
14 haven't said that.

15 They say they have relevant testimony. Why would we -
16 - why put the parties through the additional burden of having
17 to have this extended and having to deal with whatever she says
18 if they can't make a proffer that would say that Ms. Bongiorno
19 knows exactly that the Blum's got certain checks. She can't
20 say that and she won't know that. And if she did, it would be
21 not even credible. So she would know a process at best, but
22 she couldn't say that a specific check went out.

23 THE COURT: But couldn't I infer -- if she testified
24 or if anybody testified to that, couldn't I infer that they
25 actually got the checks?

1 MR. KIRBY: No, I don't think so.

2 THE COURT: Well, but that's a question for trial.

3 MR. KIRBY: I understand that, but at this point where
4 she's already taken the Fifth Amendment once, now she said,
5 okay, we bought her testimony and now she's going to have
6 relevant testimony. Now putting aside the credibility issue
7 that the Court will have to deal with if you do take into
8 account what she says, why put the parties through this
9 expense. I mean, you know, we're already --

10 THE COURT: Why is it an expense to you? You didn't
11 even bother -- let me finish. You didn't even bother to show
12 up at the first deposition. So you saved that money. Don't go
13 to the second deposition if you don't think it's worthwhile.

14 MR. KIRBY: Your Honor, we have to make choices.

15 THE COURT: Why didn't you go to the first one?

16 MR. KIRBY: Because I've been cooperating with other
17 counsel to deal with it.

18 THE COURT: All right.

19 MR. KIRBY: Okay. And that's a perfectly legitimate
20 reason not to impose the expense on it.

21 THE COURT: I'm not arguing with it, but you're
22 talking about expense and you're not incurring any expense.

23 MR. KIRBY: But it's not just -- it is an expense when
24 we have to review a deposition. We have to deal with
25 additional facts. The whole process was -- this was also

1 supposed to be done long ago.

2 Why -- you know, we're back to where we were when the
3 Trustee asked for an extension and I said -- I said to the
4 Court at that time this is -- you know, this is just going to
5 keep going on.

6 THE COURT: Well, it's not going to keep going on.
7 We're talking about one last -- one final deposition. Crupi
8 is, I take it, is not on the table.

9 MR. KIRBY: Well, apparently she's taken the Fifth.

10 THE COURT: She's just not going to testify. All
11 right.

12 MR. KIRBY: And my clients -- there is no evidence
13 that my clients dealt directly with her. Both my clients said
14 they never dealt with Annette Bongiorno. And because somebody
15 recognized some chicken scratch on a piece of paper as
16 Bongiorno's handwriting isn't enough to rebut that testimony.
17 So this is really a frolic that doesn't belong -- relate to my
18 clients. It is for that reason that we are objecting.

19 THE COURT: Thank you.

20 Mr. Dexter.

21 MR. DEXTER: Good morning, Judge Bernstein.

22 THE COURT: Good morning.

23 MR. DEXTER: I'd like to make two points here today.
24 The first is that the Trustee's counsel and counsel for Ms.
25 Bongiorno were in discussions and they kept those discussions

1 shielded from counsel for the customers. And those discussions
2 were about whether or not Ms. Bongiorno would testify. And
3 without us having any information from the Trustee's counsel
4 that Ms. Bongiorno might not testify we traveled down to
5 Florida, incurred the expense, over \$1,000 dollars paid for by
6 innocent victims of the Madoff fraud.

7 Now, throughout that period, Ms. Chaitman had
8 discussions with counsel for Ms. Bongiorno and while I was not
9 privy to those communications, I understand that counsel for
10 Ms. Bongiorno repeatedly assured Ms. Chaitman that Ms.
11 Bongiorno would testify. So after incurring these expenses,
12 attending the deposition, we're there in Florida in a federal
13 prison and we're totally blindsided at that point and told that
14 Ms. Bongiorno would not testify.

15 As to the Trustee's point earlier about some of these
16 depositions being highly relevant, I think that's a little bit
17 dubious. For example, one of the employees of Madoff who we
18 deposed didn't even know what a profit withdrawal was. She
19 didn't even know what a PW notation was.

20 THE COURT: Did any of the witnesses know what it was?

21 MR. DEXTER: Some of them knew what it was. Some of
22 them -- I mean --

23 THE COURT: Well, if you're going to depose some
24 witnesses that don't know anything about, you know, the matter
25 at issue that happens inevitably.

1 MR. DEXTER: Right; right.

2 THE COURT: That's why you depose more than one
3 witness.

4 MR. DEXTER: Right. But the point is that certain
5 witnesses have been deposed who don't know anything. It's not
6 like this has been a narrowly tailored extension of discovery
7 and we're only taking depositions of witnesses with highly
8 probative information; we're not. So because all this
9 information has been shielded from us and because we --

10 THE COURT: Which information has been shielded from
11 you?

12 MR. DEXTER: That Ms. Bongiorno had not signed the
13 settlement agreement with the Trustee and with the United
14 States Government when we incurred the cost, traveled down to
15 Florida and prepared ourselves to take the deposition. None of
16 the --

17 THE COURT: I thought the agreement with the
18 Government had been signed already.

19 MR. DEXTER: It had been signed by all parties except
20 Ms. Bongiorno. So she could have signed it prior to us
21 attending.

22 THE COURT: Oh, okay.

23 MR. DEXTER: She didn't sign it. This was known by
24 the Trustee. This was known by Ms. Bongiorno's counsel. This
25 was withheld from us, and we get down there, and then it's not

1 signed and she doesn't testify. And now the answer that her
2 attorney -- the explanation her attorney gives is that the
3 settlement agreement wasn't signed so she couldn't testify.
4 She pled the Fifth, but they knew the settlement agreement
5 wasn't signed when we flew down there. When I say they, I mean
6 the Trustee's counsel -- I mean counsel for Ms. Bongiorno.

7 So considering that SIPA requires prompt determination
8 of claims, we don't think its appropriate to have another
9 deposition that's going to further delay the resolution of
10 claims by innocent Madoff customers who are going to have to
11 needlessly incur additional cost to attend, yet, another
12 deposition in Florida for the witness who already was deposed,
13 and she chose not to testify. She chose to assert her Fifth
14 Amendment. Now, apparently after the Trustee has bought her
15 testimony, she's willing to testify and we don't think that's
16 appropriate.

17 Alternatively if Your Honor is not inclined to agree
18 with us, we request that our costs to attend the deposition in
19 Florida be paid for by the Trustee. That is my first point. I
20 started by saying I had two points.

21 The second is because Ms. Bongiorno's motive --
22 credibility and bias is highly relevant as those factors are
23 highly relevant of any witness. We request that all records --
24 all communications between the Trustee's counsel and Ms.
25 Bongiorno's counsel be disclosed to us so we understand the

1 full extent of the discussions pertaining to the settlement
2 agreement so that we can fully evaluate her credibility at the
3 time of trial and throughout depositions.

4 THE COURT: I don't understand that. Part of the deal
5 is that she cooperate. You want to find out what her attorney
6 told the Trustee's attorney she would probably testify about?

7 MR. DEXTER: Well, we certainly want to know that.

8 THE COURT: Why isn't that work product?

9 MR. DEXTER: I'm sorry?

10 THE COURT: Why isn't that work product?

11 MR. DEXTER: Well to the extent a privilege or work
12 product is claimed that should be logged and we should have a
13 basis for challenging that.

14 THE COURT: Okay.

15 MR. DEXTER: And that's all I have right now on the
16 issue currently before the Court. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. BROWN: Your Honor, I'll be very brief. Your
19 Honor, we object to the characterization that the Trustee has
20 bought Ms. Bongiorno's testimony in this matter.

21 THE COURT: I think -- look, I understand she's under
22 a duty to cooperate. I know what that means. It will just go
23 to the weight of her testimony.

24 MS. BROWN: I agree. As to the cost and the
25 characterization that this discovery had been very broad and

1 ranging, the Trustee made two motions: one to depose Ms.
2 Bongiorno and Ms. Crupi, which this Court granted, and Mr.
3 Kirby and Ms. Chaitman didn't object to those motions. So the
4 time to object to that --

5 THE COURT: Well, the cost issue is really -- you knew
6 the agreement hadn't been signed. You didn't tell anybody and
7 everybody went down. I know you said -- you suggested it would
8 be an active utility to have said to them why don't we delay it
9 until she signs the agreement. You may be right, but at least
10 then you could have said I told them and they wouldn't agree so
11 we went down and hoped she would testify. So why shouldn't you
12 have to pay the costs of going back to Florida?

13 MS. BROWN: Your Honor, we were operating under what
14 her counsel told us. What her counsel told us was that even
15 though the agreement wasn't signed, she may still testify. He
16 flew down there on Sunday himself to. I don't think he went
17 down there just to say that she's not going to testify. So we
18 flew down there on that basis and things were moving very fast.
19 It's the night before the deposition and if I made a mistake in
20 not disclosing that on the Sunday evening, I apologize to the
21 Court and I apologize to my --

22 THE COURT: Don't apologize to me.

23 MS. BROWN: I was going to say and I apologize to my
24 adversary, but we were operating under the information that we
25 were given and I felt as though I made the best decision under

1 the circumstances. I don't have anything further, Your Honor.

2 THE COURT: What about the request for communications?

3 MS. BROWN: I don't think there's been any basis to
4 establish that that's a proper request. They're challenging
5 whether or not Ms. Bongiorno's deposition should go forward.
6 They are saying that she doesn't have relevant information and
7 when you ask Mr. Dexter what he should be entitled to, he said
8 that she should be entitled to the communications about whether
9 or not she's going to give relevant testimony; well her counsel
10 has confirmed that and should be able to discover that at the
11 deposition itself. There's no basis to obtain communications
12 between counsel for that.

13 THE COURT: Okay. Thank you.

14 MS. BROWN: Thank you, Your Honor.

15 MR. DEXTER: Your Honor, if I may make one very quick
16 point about --

17 THE COURT: Very quickly.

18 MR. DEXTER: It's not just that we want the relevant
19 information. We also want information that's relevant to Ms.
20 Bongiorno's credibility. So there are two reasons why we want
21 those communications. That's all I have on that.

22 THE COURT: Okay. Thank you.

23 There are really three or four issues that are being
24 raised in the context of this discovery dispute. The first is
25 that she has no relevant information to give and that's what

1 Mr. Kirby was arguing. I don't know how I can pre-judge that
2 she has no relevant information to give when she was identified
3 by other witnesses as someone who might have relevant
4 information on this PW issue, and her own counsel said that she
5 might have -- that she has relevant information. You know if
6 she doesn't, it's going to be a short deposition, I guess.
7 That's the answer, but I can't pre-judge what she has to say.

8 In terms of buying her testimony, I can read the
9 cooperation agreement. I know what it means. And you can make
10 that argument. I don't see any basis to authorize the
11 disclosure of communications between Trustee's counsel and Ms.
12 Bongiorno's counsel; certainly not in a letter request the way
13 it's posed. But in any event, you know, the question is what
14 does she know. And -- well, I don't know the basis on which
15 she would be entitled to communications between counsel or a
16 would be deposition taker and a would be deponent
17 representative regarding her testimony.

18 The thing that bothers me is the fact that the Trustee
19 didn't say, you know, she hasn't signed the agreement. Counsel
20 tells me that there's a possibility or that counsel has
21 represented that she will testify, but she hasn't signed the
22 agreement, which requires her cooperation and I just don't know
23 why you didn't tell him that. Then discuss possibly an
24 adjournment and then if there's no adjournment, obviously,
25 you're in a better position to argue that well when we went

1 down there and took our chances because they wouldn't agree to
2 adjournment.

3 On the other hand, you know, the Trustee went down
4 there, had a reasonable basis to believe that she would testify
5 even though she hadn't signed the cooperation agreement. The
6 time was running on the discovery. While it's a close
7 question, I'm not inclined to require the Trustee to pay the
8 cost of going back to Florida. So I'll permit the deposition
9 to go forward. This is it though.

10 MS. BROWN: I understand, Your Honor.

11 THE COURT: Don't come back in a month and tell me now
12 Ms. Crupi is willing to testify. And I know I started this
13 whole thing, but, you know, let's see what these witnesses have
14 to say about this rather than have an expert, or in addition to
15 what an expert has to say, tell us what these withdrawal's
16 mean.

17 And I understand your argument, Mr. Kirby, that your
18 clients are going to say we never requested anything and we
19 never got anything. At the end of the day, that may be the
20 most probative evidence. But I'm just not going to try a
21 discovery dispute. I can't do that. I have to hear all the
22 evidence.

23 It's unfortunate that these costs have to be incurred,
24 but it's an issue that involves a lot of -- you know, a lot of
25 customers, not just yours. We're trying to manage this case

1 the best we can to deal with this issue on an omnibus basis as
2 we dealt with many issues on an omnibus basis.

3 So on that basis, you can go down and take her
4 deposition. Is it set for July 8th or do you have to set it up
5 with the prison?

6 MS. BROWN: Your Honor, we're in the process of
7 confirming that date with the prison officials. We sent them
8 the required paperwork and we're waiting to hear back, which I
9 was planning to do this afternoon as soon as I had a decision
10 from Your Honor.

11 THE COURT: How long did Mr. Madoff's deposition take?

12 MS. BROWN: Mr. Madoff's deposition began around 9:00
13 a.m. and was concluded by noon.

14 THE COURT: Because he didn't have much to say.

15 MR. DEXTER: Actually, Your Honor --

16 THE COURT: On this issue.

17 MR. DEXTER: If I may, Your Honor --

18 THE COURT: Well, it's supposed to be confidential.
19 That's my understanding, right, of the transcript?

20 MS. BROWN: Yes, Your Honor.

21 MR. DEXTER: Can we go off the record then for a
22 second, if that's all right?

23 THE COURT: All right. Well that's fine. You can
24 turn off the record. There's nobody else here.

25 MR. DEXTER: On that issue -- can I proceed?

1 THE COURT: Sure.

2 MR. DEXTER: If Your Honor could sort of memorialize
3 what your understanding is.

4 THE COURT: I don't even know if I could. Why don't
5 we have Ms. Brown say what she has to say and you can yea or
6 nay.

7 (Recess taken at 10:28 a.m.)

8 (Proceedings resume at 10:10:40:42 a.m.)

9 MS. BROWN: Thank you, Judge, we have been discussing
10 off the record whether or not Chaitman LLP will be permitted to
11 file a motion to take Mr. Madoff's deposition on the date of
12 when the Ponzi scheme started. And the Trustee will,
13 obviously, reserve all of its rights to respond to that motion,
14 if it is filed. But the Trustee would request that Chaitman
15 LLP or any other law firm that joins in that motion to depose
16 Madoff identified by account number, the accounts that have
17 account activity that predates 1992 --

18 THE COURT: January 1st, 1992.

19 MS. BROWN: January 1st, 1992 that would be impacted
20 by any such testimony from Mr. Madoff.

21 MR. DEXTER: And to clarify that the motion is not to
22 take testimony limited only to when the Ponzi scheme began,
23 that's one example of certain relevant issues that we'd like to
24 take a deposition to inquire into. And when we make the
25 motion, as Your Honor instructed, we will set forth the areas

1 of inquiry that we would like to --

2 THE COURT: And why it's relevant to the case. For
3 example, you told me -- you said one of the areas relates to
4 the maintenance of the accounts and other -- and when the Ponzi
5 scheme began. I don't know what that means in terms of an
6 innocent investor or a lawsuit. So you're going to have to
7 explain to me what the relevance is. All right.

8 MR. DEXTER: Understood, Your Honor.

9 THE COURT: All right. Fair enough.

10 Thank you very much.

11 MR. DEXTER: Thank you.

12 THE COURT: Have a happy July 4th.

13 MS. BROWN: Thank you, Your Honor, you too.

14 THE COURT: Thank you. Please apologize to Mr. Bell,
15 but we don't know who's sitting there.

16 (Proceedings concluded at 10:42 A.M.)

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RULINGS

DESCRIPTION

PAGE

HEARING RE Conference re Annette Bongiorno
Deposition

23

CERTIFICATION

I, Mary Zajackowski, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Mary
Zajackowski

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